

### **REMARKS**

Claims 1-3, 6, 7, 10-12, 15-18, 20 and 21 are now pending in the application. Claims 4, 5 and 19 have been withdrawn from consideration; Claims 1 and 2 are amended. Bases for the amendments and the new claim can be found throughout the application, drawings and claims as originally filed and, as such, no new matter has been presented. The Examiner is respectfully requested to reconsider and withdraw the rejections in view of the amendments and remarks contained herein.

### **CLAIM AMENDMENTS**

Minor amendments have been made to Claims 1 and 2. Claim 1 has been amended to more specifically define the mulch shield and Claim 2 has been amended to specify that the closure means biases the body towards the second condition.

### **ELECTION/RESTRICTION**

The undersigned gratefully acknowledges the rejoining of Claim 3 to the presently pending claims because it is generic to the elected species.

### **REJECTION UNDER 35 U.S.C. § 103**

Claims 1-3, 6, 10, 11, 16-18, and 20 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Gearing et al. (WO 03/096791 A1; hereinafter "Gearing") in view of Due et al. (U.S. Pat. No. 5,809,690; hereinafter "Due"). This rejection is respectfully traversed.

Applicant initially notes that Gearing appears to disclose a frusto-pyramidal structure 1 which is folded along fold lines 3 around a sapling or folded along the fold lines 3 prior to placement of the structure 1 over a sapling. The structure 1 has a flap 6 extending from each wall of the structure 1 with holes 8 defined therein for receipt of ground pins or anchor stakes to secure the structure 1 to the ground. Gearing further states it is an advantage of his invention that the structure 1 can be transported in a flat sheet or in a stacked configuration due to the taper of the assembled structure 1. Gearing teaches away from cylindrical tubes or structures which look like a stem of a plant or a tree trunk as these structures do not provide satisfactory protection from wildlife. In addition, Gearing teaches away from structures which must be buried as these structures provide a weak seal between the ground and the sapling, which can kill the sapling. Further, Gearing does not disclose whatsoever a structure 1 that is coiled or released to coil about a trunk or stem of a plant to close. With regard to Due, Due appears to disclose a plant guard 10 which is formed by folding along a pair of fold lines. It is an object of Due's invention to provide a plant guard 10 which is shipped in a flat orientation and then folded into a tubular shape at the site.

In contrast, independent Claim 1, recites:

a body having a bendable wall member for coiling around the trunk or stem of the plant:

wherein a slit is formed through the wall member, the upper flange and the lower flange that permits the body to be positioned in a first, generally C-shaped condition that is adapted to permit the mulch shield to be placed about the trunk or stem of the plant, and a second condition in which the body coils around the trunk or stem of the plant; and

wherein the closure means is operable for maintaining the body in the second condition.

In view of the above discussion, Applicant respectfully asserts that Claim 1 is not taught nor suggested by Gearing or Due, either alone or in combination. In this regard, Applicant submits that neither Gearing nor Due teach or suggest a bendable wall portion for coiling about a trunk or stem of a plant nor a wall member that permits a body to be placed into a second condition in which the body coils around the trunk or stem of the plant. Rather, both Gearing and Due expressly teach folding the structure or plant guard around a sapling into an assembled position. In addition, it would be improper to modify either Gearing or Due to coil about a trunk or stem of a plant, as Gearing and Due teach away from such a modification. Specifically, Gearing and Due teach the desirability of a flat structure that can be transported flat and then folded at the site to ease the transportation of the structure to the site, or a structure with a taper that can be folded, stacked and then transported to the site, in direct contrast to Applicant's Claim 1. Accordingly, Applicant respectfully requests that the Examiner reconsider and withdraw the rejection of Claim 1 under 35 U.S.C. §103(a).

With regard to Claim 2, Applicant notes that Claim 2 depends directly from Claim 1 and thus should be in condition for allowance for the reasons set forth for Claim 1, above. Additionally, Applicant notes that Claim 2 includes independently allowable subject matter as neither Gearing nor Due teach or suggest a closure means including a resilient characteristic of at least one of the body and the lower flange to bias the body towards the second condition as claimed herein. Therefore, Applicant respectfully requests that the Examiner reconsider and withdraw the rejection of Claim 2 under 35 U.S.C. §103(a).

With respect to independent Claim 20, Applicant notes that independent Claim 20 recites:

fitting the body about the tree trunk; and  
releasing the body to permit the body to coil about the  
tree trunk and close so as to form a circumferentially extending  
collar about the tree trunk.

As discussed previously, Applicant submits that neither Gearing nor Due, either alone or in combination, teach or suggest whatsoever releasing a body to permit the body to coil about a tree trunk and close as claimed herein. Rather, both Gearing and Due teach folding a structure or plant guard about a sapling. Accordingly, Applicant respectfully requests that the Examiner reconsider and withdraw the rejection of Claim 20 under 35 U.S.C. §103(a).

With regard to Claims 3, 6, 10, 11, and 16-18, Applicant notes Claims 3, 6, 10, 11, and 16-18 depend directly or indirectly from Claim 1 and, thus, these claims should be in condition for allowance for the reasons set forth for Claim 1 above. Therefore, Applicant respectfully requests that the Examiner reconsider and withdraw the rejection of Claims 3, 6, 10, 11, and 16-18 under 35 U.S.C. §103(a).

Claim 7 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Gearing in view of Due and in further view of Gubin et al. (RU 2118487 C1; hereinafter "Gubin"). This rejection is respectfully traversed.

Applicant notes Claim 7 depends directly from Claim 1 and, thus, should be in condition for allowance for the reasons set forth for Claim 1 above. Further, Applicant notes that Claim 7 includes independently allowable subject matter. Applicant notes that Gubin appears to disclose a bell-shaped greenhouse having a plurality of ring-shaped

ribs 3 and a collar 4. The bell-shaped greenhouse is buried in the ground up to the collar 4 so that one of the ring-shaped ribs 3 is underground. In contrast, Claim 7 discloses a "cleat." In addition, Applicant notes it is improper to modify Gearing with Gubin as Gearing teaches away from burying structures. Specifically Gearing states that buried structures can form a weak seal between the ground and the structure which can kill saplings. Thus, one of ordinary skill would not be motivated to combine Gearing with Gubin to arrive at Applicant's Claim 7. Accordingly, Applicant submits that the Examiner has not presented a *prima facie* case of obviousness and as such, respectfully requests that the Examiner reconsider and withdraw the rejection of Claim 7 under 35 U.S.C. §103(a).

Claims 12 and 15 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Gearing in view of Due and in further view of Koffler et al. (U.S. Pat No. 4,829,707; hereinafter "Koffler"). This rejection is respectfully traversed.

Applicant notes Claims 12 and 15 depend directly or indirectly from Claim 1 and, thus, these claims should be in condition for allowance for the reasons set forth for Claim 1 above. Therefore, Applicant respectfully requests that the Examiner reconsider and withdraw the rejection of Claims 12 and 15 under 35 U.S.C. §103(a).

Claim 21 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Gearing in further view of Gubin. This rejection is respectfully traversed.

Applicant notes that Claim 21 recites:

a lower flange coupled to the body and extending therefrom in a radially outward direction;  
a plurality of cleats that extend from a lower surface of the lower flange;  
an upper flange coupled to the body and extending therefrom in a radially outward and upward direction; ...

As discussed with reference to Claim 7, Applicant notes it is improper to modify Gearing with Gubin as Gearing teaches away from buried structures. As stated above, Gubin teaches burying the bell-shaped greenhouse up to the collar 4 to secure the bell-shaped greenhouse to the ground via an underground ring-shaped rib 3. As discussed previously, Gearing teaches that buried structures generally result in weak seals being formed between the structure and the ground, which can kill young saplings. Thus, one of ordinary skill would not be motivated to combine Gearing with Gubin to arrive at Applicant's Claim 21. Accordingly, Applicant submits that the Examiner has not presented a *prima facie* case of obviousness and as such, respectfully requests that the Examiner reconsider and withdraw the rejection of Claim 21 under 35 U.S.C. §103(a).


## **CONCLUSION**

It is believed that all of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Applicant therefore respectfully requests that the Examiner reconsider and withdraw all presently outstanding rejections. It is believed that a full and complete response has been made to the outstanding Office Action and the present application is in condition for allowance. Thus, prompt and

favorable consideration of this amendment is respectfully requested. If the Examiner believes that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at (248) 641-1600.

Respectfully submitted,

Dated: 4/5/06

By:   
Michael D. Zalobsky, Reg. No. 45,512  
Erica K. Schaefer, Reg. No. 55,861

HARNESS, DICKEY & PIERCE, P.L.C.  
P.O. Box 828  
Bloomfield Hills, Michigan 48303  
(248) 641-1600

MDZ/EKS/cr/lf-s